

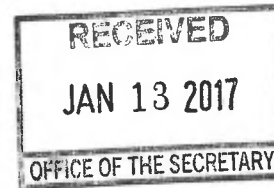
UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 10264/December 8, 2016

SECURITIES EXCHANGE ACT OF 1934  
Release No. 79507/December 8, 2016

INVESTMENT COMPANY ACT OF 1940  
Release No. 32383/December 8, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-17716



**In the Matter of**

**ROBERT L. BAKER,  
JACOB B. HERRERA,  
MICHAEL D. BOWEN and  
TERRENCE A. BALLARD,**

**Respondents.**

**PRELIMINARY ANSWER, MOTION TO  
DISMISS, OR ALTERNATIVELY,  
MOTION TO ABATE OF RESPONDENT  
JACOB B. HERRERA**

Jacob B. Herrera, one of the Respondents herein, files this his Preliminary Answer, Motion to Dismiss, or alternatively, Motion to Abate to the Order Instituting Administrative and Cease-and Desist Proceedings (the "Order") filed herein, as follows:

**I.  
Constitutional Challenge**

Prior to and without waiver of filing any substantive answer on the merits in this proceeding, Respondent Herrera lodges the following constitutional challenge to this proceeding. Under the precedent of *Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868 (1991) and *Bandimere v. S.E.C.*, \_\_\_ F.3d \_\_\_, 2016 WL 7439007 (10<sup>th</sup> Cir., December 27, 2016), Respondent challenges the authority of the Administrative Law Judge to hear this matter under the Appointments Clause of the United States Constitution, U.S. Const. Art. III, §2. Respondent Herrera requests that this matter be dismissed for lack of jurisdiction.

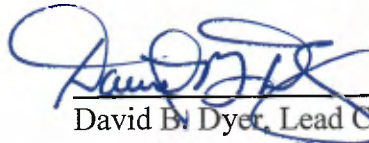
**II.  
Motion to Abate**

In the alternative to his motion to dismiss, Respondent Herrera requests that this matter be abated until the United States Supreme Court has determined if administrative law judges

have constitutional authority to adjudicate enforcement proceedings brought by the Securities and Exchange Commission.

Wherefore, Respondent Herrera requests a hearing and thereafter this matter be dismissed for lack of jurisdiction, or alternatively abated until the United States Supreme Court has determined if administrative law judges have constitutional jurisdiction to adjudicate cases such as this case.

Respectfully submitted,



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Attorneys for Respondent Jacob B. Herrera



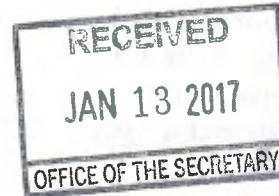
**SCHEEF & STONE, L.L.P.**

*Legal counsel based on solid principles.*

January 12, 2017

**Via Federal Express**

Office of the Secretary  
United States Securities and Exchange Commission  
100 F. Street, NE  
Washington, DC 20549



Re: *In the Matter of Robert L. Banker, et al.*  
Administrative No. 3-17716

Dear Sir or Madam:

Pursuant to Rules 151 and 152 of the Commission Rules of Practice, Respondent Jacob B. Herrera encloses herewith for filing the original plus three copies of the Preliminary Answer, Motion to Dismiss, or alternatively Motion to Abate of Respondent Jacob B. Herrera.

Yours very truly,

David B. Dyer

DBD:dkb

cc (w/encl.): Honorable Jason S. Patil  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-2557  
*Via Federal Express and email to [alj@sec.gov](mailto:alj@sec.gov)*

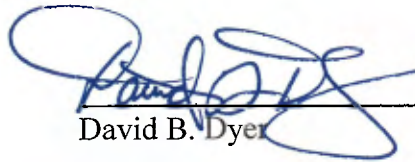
B. David Fraser  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on the 12th day of January, 2017, on the following counsel of record:

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